

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2009-07

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR A 48-FOOT-HIGH IDENTIFICATION WALL SIGN FOR FOSTER DAIRY FARMS, INC. LOCATED AT 415 KANSAS AVENUE (FOSTER DAIRY FARMS, INC.)

WHEREAS, an application for a Conditional Use Permit for a 48-foot-high, 570-square-foot, identification wall sign to identify Foster Dairy Farms, Inc. at 415 Kansas Avenue, in the M-2 Zone, was filed by Mr. Tom Vander Weide on behalf of Foster Dairy Farms, Inc., on November 17, 2009; and

WHEREAS, Section 10-2.2114(g)(4) of the Modesto Municipal Code (MMC) authorizes the BZA to grant conditional use permits for multi-story signs higher than 35-feet based on certain criteria; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on December 17, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this matter is exempt under Section 15311(a) of the CEQA Guidelines, which exempts on-premise signs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. The Foster Dairy Farms building is a 51-foot-high building, and wall signs above thirty-five (35) feet in height may be authorized through a conditional use permit approval provided that the building exceeds four (4) stories or forty-eight (48) feet in height; and
2. The Board of Zoning Adjustment has determined that the applicant has satisfactorily demonstrated that wall signs at thirty-five (35) feet cannot properly identify the building; and
3. The applicant has explored all feasible options to reach a satisfactory solution with a sign at thirty-five (35) feet or less; and
4. The design of the sign is compatible with the architectural design of the building, as it is not out of scale with the mass of the building.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a Conditional Use Permit for a 48-foot-high, 570-square-foot identification wall sign for the Foster Dairy Farms, Inc. be granted subject to the following conditions:

1. The sign shall be constructed in accordance with the plans labeled 'Foster Farms Dairy' on its face, stamped approved by the BZA on December 17, 2009.
2. All other signs shall comply with the sign requirements of the M-2 Zone.
3. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited

to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on December 17, 2009, by Ryan Swehla, who moved its adoption, which motion was seconded by Hank Pollard, and carried by the following vote:

Ayes: Bergman, Brandvold, Neumann, Pollard, Saxton, Swehla,  
Noes: None  
Absent: None  
Recused: Grover

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD  
Patrick Kelly, Secretary